UNITED
NATIONS

A S

General Assembly Security Council

Distr.
GENERAL

A/46/935
S/24066
5 June 1992
ENGLISH
ORIGINAL: ENGLISH/SPANISH

GENERAL ASSEMBLY
Forty-sixth session
Agenda item 31
THE SITUATION IN CENTRAL AMERICA:
THREATS TO INTERNATIONAL PEACE
AND SECURITY AND PEACE INITIATIVES

SECURITY COUNCIL
Forty-seventh year

Note by the Secretary-General

The attached document contains the report of the Director of the Human Rights Division of the United Nations Observer Mission in El Salvador (ONUSAL) for the period from 1 January to 30 April 1992. As will be recalled (see S/23999, para. 3), it was decided that ONUSAL's work in relation to the San José Agreement on Human Rights (A/44/971-S/21541, annex) would continue to be the subject of a separate series of reports.

92-23929 3249j (E) 090692 100692 100692

/...

Annex

REPORT OF THE DIRECTOR OF THE HUMAN RIGHTS DIVISION

INTRODUCTION

1. This report covers the period from 1 January to 30 April 1992 and has been prepared in accordance with the mandate entrusted to the Human Rights Verification Mission by the San José Agreement (para. 14 (1)). The Peace Agreement signed on 16 January (A/46/864-S/23501) and the actual cessation of hostilities on 1 February brought about a major change in the activities of the ONUSAL Human Rights Division. Difficulties directly linked to the armed conflict have gradually disappeared. The cease-fire has been fully observed, and in principle no civilian or military casualties have been recorded, with the exception of the incidents that are being investigated, which are reported on in the chapter on cases and situations relating to international humanitarian law. Irregular recruitment, by either the Armed Forces or the Frente Farabundo Martí para la Liberación Nacional (FMLN), has gradually ceased. Freedom of movement, which was the subject of numerous complaints up until 16 January 1992, has been completely restored.

2. As a result of the new situation the number of complaints has declined, particularly in what were the conflict zones. a/ However, the overall picture still gives rise to concern: summary executions and violent deaths - above all in the Departments of San Salvador, La Libertad and Santa Ana - have continued after the cease-fire, and no effective action has been taken to put an end to them, investigate them or punish the perpetrators. Moreover, there has been a recurrence of the threats against certain non-governmental organizations (NGOs), trade unions, churches and political leaders; even though clandestine organized groups are still active, no measures are being taken to prevent them from carrying out their activities or to clarify the situation. Violations of the right to life, as well as death threats, were a fundamental cause for concern referred to by the Mission in its second and third reports (A/46/658-S/23222 and Corr.1 and A/46/876-S/23580), in which specific recommendations were made to the authorities, concerning both the incidents in question and the State's duty of prevention and investigation. Unfortunately, those recommendations have as yet not been heeded in the manner prescribed in the San José Agreement (para. 15 (d)). Another source of concern was that Maj. José Alfredo Jiménez Moreno escaped from the facilities of the new Military Police. This incident was reported on 7 April 1992, the day before he was sentenced to 30 years' imprisonment for abducting five prominent businessmen, and it was regarded as a sign of the continuing impunity of perpetrators and the complicity that makes such impunity possible, particularly in the military institutions. The Mission recently addressed a letter to the Ministry of Defence on this incident.

3. Forty-two individuals were released under the National Reconciliation Act of 23 January 1992, under which amnesty is granted to perpetrators of

political crimes and related ordinary offences and which is designed to facilitate the progressive reintegration of FMLN members into political and civilian life. That measure means that the provision of the San José Agreement on the release of individuals who have been imprisoned for political reasons (para. 3) is being implemented. Moreover, the Legislative Assembly has enacted two laws to ensure that citizens affected by the armed conflict are provided with identity documents, a step that is required in order to solve the serious problem of personal documentation as required by the San José Agreement (paras. 7 and 8).

4. Furthermore, the organic law on the Office of the National Counsel for the Defence of Human Rights was enacted on 20 February and the National Counsel was appointed on 27 February. The Counsel, who is to perform a very important role, was granted a budget far lower than that requested and has as yet been unable to start his activities. The National Council of the Judiciary Act, which according to the Peace Agreement was to be made public not later than 1 April 1992, has not yet been presented.

5. The Mexico Agreements of 27 April 1991, reaffirmed by the Peace Agreement of 16 January 1992, provide for a major reform of the judicial system, which has been adopted by the Legislative Assembly and has now been incorporated in the Constitution of the Republic. The judiciary receives an allocation from the State budget amounting to no less than 6 per cent of current income. The minimum eligibility requirements for Justice of the Peace are being changed, and it is now necessary to be a counsel of the Republic and of established competence to qualify. A career judicial service has been set up, and there is now a new method of appointing judges to the Supreme Court of Justice. Judges of the Courts of Second Instance and of the Courts of First Instance and Justices of the Peace, who are now integrated into the career judicial service, will enjoy stability and independence in performing their duties. Magistrates or Judges cannot serve as lawyers or as officials of other State organs. Important functions have been assigned to the National Council of the Judiciary.

6. The Attorney-General of the Republic has been given new powers: to conduct the investigation of crimes, through a body whose attributes are to be prescribed by law, without prejudice to the independence of judges in investigating the facts. A change has also been made in military jurisdiction: the special military courts no longer can exercise jurisdiction in the event of a state of emergency. Military courts will now be confined to trying crimes and minor offences committed while on duty of a purely military nature perpetrated by members of the Armed Forces in active service.

7. On 17 March 1992 at the Court of First Instance at Chinameca, Department of San Miguel, the Mission witnessed the handing over of two FMLN combatants allegedly implicated in the death of the two United States advisers David Pickett and Earnest Dawson in January 1991. ONUSAL will follow this trial closely. With regard to the case concerning the El Mozote incidents, the reader is referred to the relevant comments made in the third report,

particularly those concerning the need to examine skeletal remains using appropriate anthropological techniques, and the desirability of calling in international experts in the field to assist in the investigations.

8. This report will concentrate chiefly on two topics. Firstly, it will deal with the right to life and to integrity and security of person (San José Agreement, para. 11), with special reference to the investigation of deaths due to other than natural causes. It will then consider the issue of due process of law (San José Agreement, paras. 11 and 14 (h)), in order to identify crucial issues relating to the administration of criminal justice regarded as being of high priority as a result of the verification activities carried out by the Mission. The two topics are interrelated, since criminal investigations, even at the pre-trial stage, are closely linked to criminal procedure. Those questions will be given special treatment because this report is an introduction to one of the Mission's priority tasks at the next stage, namely, to "help improve the judicial procedures for the protection of human rights and increase respect for the rules of due process of law" (San José Agreement, para. 14 (h)). This report will also deal with the issue of identity documents (San José Agreement, paras. 7 and 8) and with cases and situations relating to humanitarian international law now that the armed conflict has ceased.

I. CASES RELATING TO HUMAN RIGHTS

A. Right to life and to integrity and security of person

1. Summary executions or deaths in violation of juridical guarantees

9. The following case is a particularly good example of the violations of the right to life that have been committed during the period covered by this report.

10. No. ORSS/1008. Nazario de Jesús Gracias, trade-unionist, age 34, residing at the headquarters of the FEASIES trade union in San Salvador. The victim was employed as a watchman in the union building, where he was found dead at 8 a.m. on 2 March 1992. The body exhibited multiple wounds to the head, neck, forearms and hands inflicted with a knife-like weapon. The apartment - including the walls - was covered with blood. The manner in which the body was found indicates that the victim was first bound and blindfolded and subsequently killed with a machete. The total and partial amputation of fingers from the right hand and wounds to the forearms suggest that he attempted to defend himself.

11. The incident created a stir because of its viciousness and its similarity to other crimes which, though as yet unpunished, have been attributed to organized groups judging from the manner in which they were committed. Once again, the preliminary measures taken were entirely inadequate. Many people

entered the room in which the body was found. ONUSAL arrived at the scene before the duty magistrate and learned that no photographs had been taken and that no diagram of the scene had been made. The magistrate, who declined to call the police or await the arrival of police observers from the Mission, did not carry out the thorough examination of the body prescribed by law and left before the police arrived without having the area around the body sealed off. At approximately 6 p.m., as it was growing dark, a Commission from the National Police arrived at the scene of the crime to take fingerprints.

12. Nazario de Jesús Gracias had been captured on 21 October 1991 by the First Infantry Brigade in downtown San Salvador, turned over to the National Police on charges of "conspiracy to subvert" and released after three days. The Mission archives include case No. ORSS/332, under the heading "illegal detention and threats", in which Gracias accused the First Brigade and the National Police of making threats on his life. At that time, Gracias was released after ONUSAL intervened directly with the National Police. Upon his release, Gracias made statements to the press and, apparently, later received telephoned death threats on three occasions.

13. Witnesses from the union headquarters and neighbours state that many former National Guardsmen were present in the vicinity of the murder site in the days leading up to the crime and during the night on which it was committed. On 3 March 1992, FEASIES informed ONUSAL that it was holding an individual named Ulises Jiménez Tobar. This person had been caught by union members photographing people in front of the union headquarters. ONUSAL subsequently learned that union members found in Jiménez s possession a Browning pistol with the identification number scratched off and a card from the Ministry of Defence dated 1 November 1991 identifying him as a "worker under the command of the Territorial Service of the Armed Forces" and authorizing him to bear arms. ONUSAL received a copy of a document which recorded Jiménez's release into the custody of his lawyer and his threats to union members who, he said, would meet the same fate as Nazario de Jesús Gracias.

14. Following an initial interview by ONUSAL with the mother-in-law of Gracias, who lives in the Department of Usulután, four strangers came to the house and made threats. The wife of Gracias confirmed that her husband had been threatened while under arrest in October 1991 and said that he had received an anonymous telephone call at FEASIES three days before his death warning him that he would be killed. The case was assigned to the Court of First Instance on 23 March 1992, or 21 days after it was opened, in contravention of various legal practices.

15. During the period covered by this report, the Mission determined that procedural norms had been violated in one way or another in the following cases. In case No. ORSV/417, concerning the death of Santiago de Jesús Amaya Bermúdez, no security body appeared on the scene after the body was discovered. In case No. ORSM/299, concerning the death of Rómulo Adán Escobar, the court took no action on the motions made by the prosecutors

assigned to the case. In case No. ORSS/815, concerning the murder of José Marino Campos Mos, after the body was identified by the justice of the peace, the Criminal Court of First Instance took virtually no action.

16. Justices of the peace often use persons with no specialized training as their experts, which hampers a thorough investigation. In the case corresponding to charge No. ORSV/417, concerning the death of Santiago de Jesús Amaya, the judge, for purposes of examining the body, appointed as experts a journalist and a professor, who claimed that the victim had received two wounds from a .38 calibre firearm. The autopsy, ordered some two weeks later, established that the body contained five bullet wounds. In case No. ORSV/355, concerning the death of Manuel Antonio Lara Cerón, the judge had the body examined the day after the death was certified. No qualified persons were present; the experts were a mason and a merchant. No autopsy was subsequently ordered in this case. Nor were autopsies carried out in the following cases: No. ORSS/848, concerning the death of Francisca Chávez Gonzales; No. ORSA/453, concerning the death of Pedro Luis Medrano Pérez; No. ORSA/505, concerning the death of José Luis Vallejos Urrutia; and No. ORSS/815, concerning the death of José Marino Campos Mos.

17. Failure to follow established procedures in the preliminary investigation of deaths due to unnatural causes is a widespread practice on the part of both the judiciary and the police. Yet the law requires that the police inform a judge immediately of offences against life or integrity of person or any other offence that may cause serious social unrest. The judge of the court of first instance must investigate personally cases falling within the last category. Justices of the peace perform many of the formalities which are vital to such investigations. This generally happens with initial steps when they are carried out outside the court of first instance. Justices of the peace must inform the court of first instance of those measures within 12 days, even though they always have the authority to carry them out themselves. Many justices of the peace and even judges of courts of first instance act with gross negligence in securing the scene of the crime, obtaining evidence, taking fingerprints, issuing arrest warrants, interrogating witnesses, having the bodies examined by experts or conducting autopsies. The existence of functioning forensic medical institutes at Santa Ana, San Vicente, San Miguel and Usulután, in addition to the one in San Salvador, makes it inexcusable not to order autopsies. Cooperation between judges and investigating authorities is also of the utmost importance.

18. Another frequent occurrence is the failure of staff from the Office of the Attorney-General of the Republic to fulfil their legal obligations in investigating offences. It would be premature, however, to assess their efforts during the period following the most recent constitutional reform, which became effective on 30 November 1991 and gives these individuals new responsibilities (para. 6). The Office of the Attorney-General has begun round-the-clock work programmes and is supervising the installation of new prosecutors' offices.

II. SITUATIONS AFFECTING HUMAN RIGHTS

A. Right to due process of law

19. The Code of Criminal Procedure has been in force since 1974, although it was drawn up in response to much earlier ideas. It sets out a distinctly inquisitorial procedure, although the procedures of trial by jury and public hearings have been introduced for trying certain offences. It is thus a hybrid text in which recent reforms have sought to incorporate certain guarantees into the instrument without modifying it substantially.

1. Extrajudicial confessions

20. Extrajudicial confessions are often a fundamental requirement for pre-trial detention. However, the Code of Penal Procedure ascribes no probatory value to extrajudicial confessions in the case of political crimes. This is due to the widespread conviction among the legal community and society in general that extrajudicial statements are often obtained by means of violence or coercion. The Commission for the Revision of Salvaldorian Legislation (CORELESAL), established in 1984 by the Government of El Salvador to suggest ways of reforming the criminal laws, said that extrajudicial statements "... are most frequently obtained in auxiliary bodies through violence or intimidation ...". b/ The Mission has ascertained that such practices exist and included specific examples thereof in its second report. These situations continue to occur, as demonstrated by recent cases involving the National Police (Nos. ORSV/564 and ORSV/567). However, the Constitution of the Republic (art. 12, para. 3) establishes as a general rule that statements obtained against an individual's will are invalid. This principle is consistent with the provision in the American Convention on Human Rights (art. 8, para. 3), that "a confession of guilt by the accused shall be valid only if it is made without coercion of any kind".

21. In common crimes, extrajudicial confessions are considered to be sufficient evidence if they meet certain requirements. For example, when such confessions are made before an auxiliary body, two witnesses, most often members of the bodies in question, must testify that the accused was not acting under duress. In addition to extrajudicial confessions heard by auxiliary bodies, the Code provides for confessions to be made to two witnesses, even when the two confessions are made at different times and in different places.

22. Within the Ministry of Justice, a unit called Technical Support for Judicial Reform (ATJ), which has been in operation since June 1991, is drafting bills, particularly in the areas of criminal legislation and criminal procedure to bring legislation into line with the guarantees of due process of law. c/ The Ministry bills that were put to a referendum in March 1992 included one on the elimination of extrajudicial confessions. This bill, like others which have appeared thus far, are a positive development in the effort

to modernize the country's legislation on the basis of guarantees and is consistent with some of the most advanced thinking in this field.

2. Administrative detention

23. The auxiliary bodies can detain an accused person for 72 hours, after which they must hand him over to the judge having jurisdiction. During this period, referred to as "administrative detention", the above-mentioned extrajudicial statement is usually given. The Code of Criminal Procedure currently in force became effective on 15 June 1974; its article 143 provided, in accordance with a long-standing legislative tradition in the country, that administrative detention must not exceed 24 hours. In 1977, a subsequent reform established the 72-hour period currently in force. The Mission has noted that it is a common police practice to utilize the maximum period of administrative detention (72 hours), a practice which should be followed only when warranted by the seriousness of the crime and the difficulty of the investigation. It has also noted that the National Police sometimes exceed the maximum period of 72 hours (case No. ORSS/1345).

24. The right of a detained person or prisoner to be brought "without delay" before a judge or an official authorized by law to exercise judicial functions is embodied in the international human rights treaties ratified by El Salvador. d/ Prolonged administrative detention can violate this right. Furthermore, if confessions obtained while in police custody are to be inadmissible, as envisaged by the legislative reforms under way, it would appear logical to shorten the maximum period of administrative detention. A preliminary draft proposal prepared by ATJ, which is consistent with the anticipated elimination of the above-mentioned extrajudicial statement, specifically proposes to limit administrative detention to 24 hours, renewable only by a reasoned decision of a judge having jurisdiction, for a maximum of 48 hours.

3. Incommunicado detention

25. Incommunicado detention is not provided for either in the Constitution or in the laws on criminal procedure. The right of detained persons to communicate with others derives from the basic law which provides for communication with a defence lawyer from the beginning of the investigation (Constitution, art. 12). This right is likewise embodied in the international treaties ratified by El Salvador. d/ The San José Agreement (para. 2 (e)) expressly provided that no detainee would be held incommunicado. e/ However, as the Mission noted on repeated occasions, incommunicado detention appeared to be a de facto practice of many authorities which made arrests, whether or not they were empowered by law to do so.

4. The right to legal counsel

26. The exercise of this right, which is enshrined in the internal and international legal order and in the San José Agreement (para. 2 (e)), is to a large extent limited by socio-economic factors, legislative gaps which the country is attempting to fill and persisting institutional flaws. A large proportion of prisoners lack the economic resources with which to obtain reliable legal counsel. Systematic visits to penitentiaries, penal centres and houses of detention by observers from all of the Mission offices have enabled them to assess the status of the right to legal counsel in practice. It is clear from conversations with prisoners that many who have been incarcerated for more than four or five years have never seen a lawyer. Furthermore, the majority of prisoners interviewed on one occasion in the country's main penitentiary were unaware of their right to select a defence lawyer at the start of the proceedings. The Mission has noted that even prisoners who have a private defence lawyer rarely see him. Administrative transfers of detainees, without notice to judges and lawyers, make the exercise of the right to legal counsel even more difficult.

27. The situation is still worse where accused persons have only a court-appointed lawyer, or must rely for legal assistance on the Office of the Chief State Counsel. Indeed, whether owing to a lack of resources or a sufficient number of lawyers, or to self-imposed restrictions without much legal basis (such as the refusal to defend recidivists), that institution is far from able to solve the problem of the lack of legal counsel for criminal defendants. ONUSAL has conducted a special investigation into the functioning of the Office of the Chief State Counsel in cases involving military and common crimes in areas outside the country's central region, encompassing the Departments of La Paz, San Vicente and Cabañas. Through the follow-up of a representative number of cases, it had been possible to establish, together with the need for greater professionalism on the part of staff members of the Office of the Chief State Counsel, the desirability of adopting an integrated approach to the problems of the right to legal counsel, which should include the strengthening of the Judicial Branch.

28. The prison population is mostly illiterate or semi-literate; inmates are not informed of their rights and obligations, either by judges or upon entering a detention centre and, in general, lack minimum information on the status of their case. The Mission has noted that accused persons are very rarely notified of judicial decisions; in general, they are informed only of the final sentence, and then the information sometimes is vary late.

29. With a view to improving the exercise of the right to legal counsel, the Legislative Assembly recently adopted a draft law on legal assistance and public defenders, originating with the Ministry of Justice. According to this law, every accused person has the right to be defended immediately, from the beginning of the extrajudicial proceedings or the trial, by legal counsel selected by him or designated by his next of kin or, in the absence thereof, by a court-appointed lawyer. What is innovative about this is the reform

which establishes the defence lawyer's powers during police investigations, an aspect not governed by the Code of Criminal Procedure currently in force. Another innovative aspect of the law is that the presence of a defence lawyer during non-jury trials is made mandatory rather than optional, which is consistent with the notion that all trials should have an adversarial nature.

5. Pre-trial detention, bail and delayed administration of justice

30. A judge of first instance, as well as a justice of the peace, can order an accused person to be detained for the purposes of taking a deposition; the accused can then be held for 72 hours. Within this period, the court having jurisdiction must either order the accused to be released or order him to be held pending trial. Even this rule has exceptions in practice. In one case (ORSS/872), an accused person had not yet made a statement 10 days after his arrest. In another case (OSRU/0296), an accused person detained on the order of a judge of first instance was held for up to 70 days in a National Police interrogation centre, which is not an official place of detention. While the present report will not deal with specific aspects relating to conditions of detention or imprisonment, the case constitutes a flagrant irregularity in the rules of pre-trial detention. The criteria for ordering preventive detention are twofold: there must be sufficient proof that a crime has been committed, and sufficient evidence to suggest that the accused participated in the commission of same, although in a number of crimes, the second criterion suffices.

31. Once pre-trial detention has been ordered, the possibilities of obtaining bail are meagre. Bail is warranted only where the crime is punishable by a fine or a maximum sentence of three years' imprisonment. Nearly all crimes of any significance exceed that scale of penalties. For example, theft is punishable by one to five years' imprisonment where the value of the stolen item is greater than 20 colones (US$ 2.50). Moreover, bail is restricted by numerous exceptions. As a result, bail becomes so difficult to obtain that pre-trial detention ceases to be a way of ensuring the presence of the accused and becomes, in many cases, a form of advance penal servitude, notwithstanding the principle of presumption of innocence. This is reflected in the make-up of the prison population, in which there is an extremely high ratio of accused to convicted persons. This phenomenon is frequently accompanied by a prolonged delay in the administration of justice.

32. According to recent data (see appendix), there were a total of 5,286 prisoners in the penitentiaries and penal centres in the country, of whom 4,755 were awaiting trial and 531 were serving sentences; that amounts to 89.95 per cent awaiting trial and 10.05 per cent serving sentences. In El Salvador, as in many countries, the time-limits for instituting proceedings and conducting a trial are not adhered to. Under the law, the judge must complete the investigation within no more than 120 days; although in itself that is a reasonable period of time, in many cases it is not observed. The greatest delays seem to occur in the most densely populated departments,

including San Salvador and the adjoining areas, and Santa Ana and San Miguel. According to certain estimates it takes more than two and a half years, on average, to try a criminal case. During a visit to one prison the Mission was informed that one of the prisoners, who had been arrested on suspicion of stealing, had been awaiting trial for four years. On another occasion, ONUSAL was told about the case of one person who had been arrested on 25 March 1983 and sentenced by the court of first instance to 16 years in prison for murder, which sentence had not yet been confirmed by the Chamber of Second Instance. It is estimated that the number of prisoners awaiting sentencing continues to increase slightly each year.

33. Offences punishable by not more than three years in prison and those punishable by fines are handled by summary proceedings in the courts of first instance. With certain exceptions, including those involving abduction, extortion, rape, theft, robbery, swindling and drug and narcotics-related offences, cases are dealt with by jury panels. Moreover, pursuant to a recent reform, the panels for the more serious offences have been concentrated in the largest cities and judicial districts. Whereas, in the recent past these panels were often not formed, which in many cases resulted in a postponement of the public hearing, now this no longer happens. f/ Last year there were 1,532 final sentences handed down of which 787 were convictions and 745 were acquittals; this does not appear to be sufficient to eliminate the delays in the administration of justice. The pace has not been any faster during the first two months of this year indicating that the problem of delayed justice still persists. g/

34. To a large extent, overcoming the delays is a matter of human and material resources. The Mission has been able to ascertain the magnitude of the needs in the country, not only in terms of the number of judges and court personnel, but also in terms of training of many of the staff involved with the administration of justice and of the physical infrastructure they can utilize. The delays in the penal system prompted the Legislative Assembly to adopt an Emergency Act to resolve the problem of Unconvicted Prisoners (Decree No. 769 of 25 April 1991), effective for one year as from 29 May 1991. Under this Act, prisoners who have been awaiting sentencing for longer than the period allowed by law must be released. As of the writing of this report, 448 individuals had been released under this Act, less than 10 per cent of the total prison population. This initiative was intended to resolve not only the problems concerning the delays in the courts but also those arising from prison overcrowding. The modest results resulting from implementation of the Act demonstrate that the measure did not produce the desired effects.

35. The Supreme Court of Justice decreed that an official known as the "Inspector of Prisons" should act as a liaison between the judicial organ and the prisoners. Although one of his functions is to monitor the progress of the proceedings and to report any shortcomings he may find to the judges, the initiative does not seem to have speeded up the proceedings to any significant degree. Nevertheless, the intervention of these officials has made it possible to avoid a number of abuses.

36. The delays in the Courts violate the provisions of the international human rights treaties ratified by El Salvador at least in three respects: the right of every person arrested on criminal charges to be tried promptly or released, the right of every person charged with an offence to be tried without delay and the exceptional nature of pre-trial detention. h/ With respect to the latter, the present understanding is that pre-trial detention must not be used to achieve ends which legitimately fall within the framework of criminal penalties. It is not intended to in effect become a prison sentence but to make sure, in specific cases, that the accused is not able to elude justice or to impede the progress of the investigation. i/

37. One point worth bearing in mind is the final document of the research programme of the Inter-American Institute of Human Rights on penal systems and human rights in Latin America. This document proposed that pre-trial detention that continues for more than two years without the accused or the defence having arbitrarily impeded the progress of the proceedings, should be deemed a violation of human rights and should not be permitted in any country in the region. It also suggested establishing in the constitutions that the maximum period for pre-trial detention may not exceed four months, save when the accused or the defence have arbitrarily impeded the progress of the proceedings. It was also proposed that no one should be held pending trial for the maximum period currently allowed, if that would be more than half the length of time which the accused might have to serve were he to be convicted. j/

38. With respect to the delay in the administration of justice, as with other aspects of criminal proceedings and criminal investigation outlined in this report, the Mission has been able to ascertain that its interventions with the judicial organ - whether with the justices of the peace or the courts of first instance - have had a positive effect in many cases. Nevertheless, on the whole this has been confined to cases raised by ONUSAL observers and it has not had a similar effect on the treatment of other cases, nor has it produced an overall improvement in judicial practice. As will be pointed out in the conclusions, judicial reform involves resolving structural problems. In the belief that it would be desirable to consider, step by step, a series of systematic changes, the Mission has formulated the recommendations contained in the relevant chapter concerning various critical aspects of the criminal justice system.

B. Identity documents

39. ONUSAL has given priority attention to the issue of identity documents for displaced persons and returnees and all persons in the areas involved in conflict (San José Agreement, paras. 7 and 8) and has made recommendations on this issue in its two previous reports. The two legislative decrees designed to deal with the situation of persons who have no documents have entered into force. One of them consists of a series of reforms to the act on the Replacement of Registers and Entries in the Civil Registry k/ to facilitate

the replacement of those registers which were damaged in the past and replacement of all kinds of certificates including birth certificates. The other, a special transitional measure for establishing the civil status of persons affected by the conflict having no Documents - which is in effect for one year as from 24 March 1992 - facilitates the registration of any person whose birth has not been registered for reasons relating to the internal conflict, including minors born abroad. The Mission applauds the promulgation of these measures and the good will demonstrated by many mayors in tackling the problem of persons having no documents and it hopes that the question relating to the implementation of the new rules will be resolved speedily and effectively.

III. CASES AND SITUATIONS RELATING TO INTERNATIONAL HUMANITARIAN LAW

40. In section III of its first report the Mission stated the limits within which it would verify cases and situations involving international humanitarian law as part of the mandate conferred by the San José Agreement. The Cessation of the Armed Conflict went into effect on 1 February 1992 and will be completed on 31 October 1992 pursuant to the Peace Agreement of 16 January 1992. This report covers that period. One element of the Cessation of the Armed Conflict is the end of the military structure of FMLN and the reintegration of its members, within a framework of full legality, into the civil, political and institutional life of the country. International humanitarian law includes norms that also apply to the cessation of hostilities. 1/ Although the situation established in the Peace Agreement could not be specifically provided for in the applicable treaty provisions, it is the Mission's understanding that the protection granted by international humanitarian law remains in effect throughout the entire period of the Cessation of the Armed Conflict. In the light of these considerations it will continue to consider the issue during that period.

41. As may be seen from the statistics contained in the appendix, the Mission has continued to receive reports of violations of international humanitarian law during the period covered by this report. Complaints against the Armed Forces on those grounds fell drastically during the month of January and were almost non-existent in February and March. That was not the case with respect to FMLN: communications concerning violations by FMLN of international humanitarian law continued to be received as did reports of abductions. Although ONUSAL has discounted a number of these reports, considering them false or inadmissible, it has also been able to ascertain that in certain cases there have been violations attributable to FMLN. That has been true in case No. SORU/293 involving José Avalos, who was held for nine hours on 30 March 1992. Shortly thereafter, on 7 April 1992, Avalos was murdered by a group of persons unknown. According to the preliminary investigations conducted by ONUSAL this would seem to have been an ordinary crime, which the Mission will continue to investigate. The Mission has been able to verify other cases of persons who were held by FMLN for varying periods of time when

checking into the complaints made in case Nos. SORU/279 and SORU/290. In response to other complaints, FMLN informed ONUSAL that they were voluntary recruitments. However, the Mission continues to investigate some of these complaints when the FMLN replies are not entirely satisfactory.

42. Although there have been almost no reports of attacks on life in relation to international humanitarian law, the Mission continues to monitor closely the evolution of this phenomenon, particularly since the start of the Cessation of the Armed Conflict. Accordingly, case No. ORSM/537 concerning the death of Carlos Nuñez Membreno, which is being investigated by the relevant regional office, is particularly disturbing. Because of its significance, the Director of the Division of Human Rights also referred the case to FMLN, requesting exhaustive information on the case.

43. During this period there have been a great many complaints against FMLN regarding violations of the rules protecting the civilian population. A substantial portion of these communications are for the month of January and refer to acts or threats of violence, many of them relating to the so-called war tax. Although the number of these complaints declined in February and March they have not stopped entirely. When these communications were referred to FMLN, it denied all responsibility. The Mission continues to give full attention to these cases.

IV. CONCLUSIONS

44. The problems of the criminal justice system have many causes, some inherent in its structure and others resulting from the past and linked, in particular, to the internal armed conflict in El Salvador. An example of the latter is the large number of judges, known as "judges in exile", who have not been able to perform their functions in conflict zones, in nine of the 14 Departments of El Salvador. It is clear that the criminal justice system as a whole should be completely overhauled as part of a broader reform of the administration of justice, its auxiliary bodies, the Chief State Counsel's office and the function of defence lawyers. This process may be prepared through gradual reforms which, although partial, must be systematic, and which depend, for their success, on consensus and social participation. The initiatives developed in this respect in the Ministry of Justice are positive and should be encouraged as necessary steps towards far-reaching reform of the judicial system and, in particular, of the criminal justice system. In this context, all the social sectors have a specific role to play, but some are pivotal for the process of change. That is the case of the mass communications media, which to a large extent can promote or fail to promote the process of criminal justice reforms during the transitional stage.

45. The problems discussed in this report represent challenges which require not only legislative solutions, but political and institutional responses, not only from the State but from the citizenry as a whole. The flaws in the judicial system, demonstrated chiefly by its inability to investigate violent

deaths, the selectivity of the criminal justice system and delays in sentencing, cannot be remedied without basic reforms which must be made sooner or later and require painstaking campaigns of discussion and explanation. Only then will it be time to cope with structural defects, such as those which now exist. One example of those defects, organic in nature, is that the examining magistrate who investigates the facts of the case is at the same time the presiding judge who directs the proceedings and passes sentence. There will be no basic solution unless the independence and impartiality of the judiciary is upheld, and there is an increase in the number of judges, as well as an improvement in their training and of the human and material resources that support their work. In this respect, the Agreement on Peace and Constitutional Reform referred to earlier has laid the basis for the necessary changes. Education concerning the law and the legal system is an important factor in creating an awareness of the urgent need for the changes required in the existing criminal justice system. In order to strengthen this aspect of the protection and promotion of human rights, the Mission will make specific recommendations in this first report in which it has considered in more detail the problems of due process of law, in fulfilment of the mandate conferred on it by the San José Agreement (paras. 11 and 14 (h)).

V. RECOMMENDATIONS

46. In this section the Mission makes recommendations to the parties based on the conclusions drawn from the cases or situations it has reviewed (San José Agreement, para. 14 (g)). The parties have undertaken to give their earliest consideration to any recommendations made to them by the Mission (San José Agreement, para. 15 (d)).

A. Right to life and to security and integrity of person

Investigation of the facts

47. The Mission reiterates the recommendations contained in its second and third reports (para. 150 and paras. 154 and 155 respectively) and calls on the Government of El Salvador, the Office of the Attorney General of the Republic and the Judiciary to take decisive and firm measures for the prevention and investigation of violations of the right to life and to security and integrity of person. The National Police should be provided with the necessary material resources to carry out its functions and ensure that it maintains professional standards in carrying out proper investigations. Judges should use the powers of investigation accorded under the law and improve coordination with the National Police. Judges of the first instance should personally conduct the investigations in cases that have given rise to serious social unrest and in particular to encroachments on the right to life. The autonomy and independence of the Chief State Counsel's Office should be strengthened. Prosecutors should play an active role in initiating proceedings and investigating crimes, and the Attorney General of the Republic should use all

the powers available to him under the judicial system, including that of appointing special commissions (Constitution, art. 193 (7)), which could be done selectively to clear up relevant cases. m/ Prosecutors should take into account the United Nations Guidelines on the Role of Prosecutors and, in particular, those concerning prosecutors in criminal cases. Furthermore, a register of victims of deaths from other than natural causes could be established.

B. Right to due process of law

1. Extrajudicial confessions

48. Until a measure such as a draft law prohibiting extrajudicial confession is approved, the duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present should be recorded and legally certified. A detained or imprisoned person, or his counsel, must have access to that information in accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly in resolution 43/173 of 9 December 1988 (Principle 23). Furthermore, the principles invalidating statements made in an atmosphere of intimidation, or under any form of coercion, must be observed. In particular, acts of psychological coercion or classic coercion (torture and other cruel, inhuman or degrading treatment or punishment) during interrogation must be severely punished. In addition to the provisions of domestic law and of international treaties ratified by El Salvador, the recommendations contained in the Body of Principles cited above and of the Code of Conduct for Law Enforcement Officials should be taken into account.

2. Administrative detention

49. The police should hold accused persons in administrative detention for a maximum of 72 hours only where the gravity of the charge and the difficulties of the investigation make this strictly necessary. Under no circumstances should this period be exceeded. Courts should monitor the administrative detention of accused persons from the moment of their detention. Courts of first instance should undertake such monitoring in all cases in which the circumstances of the crime or the position of the accused or of the victims have provoked social unrest. Courts should exercise more rigorous supervision over places of administrative detention, through regular visits and inspection of the records. Also, through legislative reform such as that proposed in the bill prepared by the Ministry of Justice, efforts should be made to reduce the maximum period of administrative detention to a reasonable length.

3. Incommunicado detention

50. The commitment given in the San José Agreement concerning the prohibition of incommunicado detention must be scrupulously respected. There should be no derogation from this principle nor can it be modified by the application of disciplinary measures in prison or during pre-trial detention. Any person deprived of his freedom should therefore be allowed, from the very beginning of his detention, to communicate, especially with his family, relatives and counsel and with humanitarian organizations. In this connection, the Mission recommends that a study be undertaken of legislative reform that would explicitly incorporate this guarantee in the Code of Criminal Procedure.

4. The right to legal counsel

51. Without prejudice to the application of the new legal norms governing legal assistance and public defenders, upon the entry into force of those norms, the competent authorities should effectively advise any person, whether or not detained, against whom an investigation by the auxiliary organs of justice is being initiated of his right to appoint legal counsel. The accused should be advised of this right from the moment he is charged. Any person arrested or detained, on a criminal or other charge, shall be guaranteed access to counsel immediately and in all cases within 48 hours of his arrest or detention, in accordance with the basic principles on the role of lawyers (Principle 7). n/ A special effort should also be made to train public defenders.

5. Pre-trial detention

52. A person may be subject to pre-trial detention only where such detention is necessary to ensure his presence at the trial or to prevent any obstacles being placed in the way of the investigation. Courts should use the maximum term of 72 hours for their investigations (art. 244 of the Code of Criminal Procedure) only where the gravity of the offence and the difficulties of the investigation render this strictly necessary. The rules governing the length of pre-trial detention set forth in paragraph 37 of this report should be respected and a legal provision should be adopted establishing procedures for automatic release based on the above-mentioned rules, when the emergency law to resolve the problem of untried detainees ceases to have force.

6. Delay in the administration of justice

53. A special effort should be made to observe the time limits prescribed by law for concluding the pre-trial proceedings in criminal cases and to ensure that those proceedings in no case exceed what may be considered a reasonable period. Also, the delays provided for the trial itself from its commencement to the rendering of the judgement and notification of a final sentence should

be respected. In order to promote respect for the right to be tried without undue delay, the Mission recommends that the organization of the administration of justice and of the Office of the Chief State Counsel should be strengthened by implementing the judicial system reforms that have been incorporated into the Constitution of the Republic as a result of the signing of the Peace Agreement.

C. National Counsel for the Defence of Human Rights

54. The financial and capital resources provided for in the law establishing the National Counsel for the Defence of Human Rights must be made available, particularly the contributions and grants made by the Central Government, and steps must be taken to ensure the transfer of the funds necessary for the start-up operations of this new institution.

D. Identity documents

55. The central authorities and local bodies must assist mayors in applying the new laws in this field, as well as all the other procedures for the documentation of personal identity. Such assistance should include clear and consistent instructions to municipalities on the application of the new norms in conformity with the principles of equality before the law and non-discrimination. The process of documentation must be completed in the shortest possible period to facilitate the full reintegration of the persons concerned into national life.

E. Respect for international humanitarian law

56. The Mission recommends that the parties, during the entire period of cessation of armed conflict, should strictly observe the norms of article 3 which are common to the four Geneva Conventions of 12 August 1949 and to Additional Protocol II o/ to those Conventions, particularly with regard to the fundamental guarantees concerning the treatment of human beings and the protection of civilian populations.

F. Follow-up to recommendations

57. On 7 January 1992, the Mission sent notes to both the Government of El Salvador and FMLN seeking to ascertain the manner in which the recommendations contained in its second report (paras. 146 and ff.) were being followed. The notes included a reminder of the thrust of those recommendations. FMLN, on 27 April 1992, sent a letter in reply to the note of the Mission. The Government of El Salvador has not yet responded to the Mission's request.

Notes

a/ The number of complaints received by the Mission from January to March 1992 declined by 19.7 per cent as compared with October-December 1991. The decline was even more drastic with regard to complaints of violations of international humanitarian law - as much as 79.1 per cent. Complaints of irregular recruitments dropped by 58.7 per cent.

b/ Commission for the Revision of Salvadorian Legislation, "Immediate Reforms to the Code of Criminal Procedure", first part, vol. II, July 1987, p. 389; see also p. 402.

c/ The Technical Support for Judicial Reform unit (ATJ) worked out several drafts of partial reforms in penal and criminal procedures pending preparation of new drafts of the Penal Code, the Code of Penal Procedure and Execution of Penalties. As of 31 March, the President had tabled bills dealing with legal assistance and public defence - that have now been passed by the Legislative Assembly - and with decriminalization of theft and fraud among close relatives and the elimination of presumptions of guilt. Bills dealing with the repeal of the practice of extrajudicial confession, of the period of administrative detention and indivisibility of confession.

d/ International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex, and American Convention on Human Rights.

e/ This provision was included among the commitments for immediate action on human rights of the San José Agreement and in annex A of the operations manual on priority to be given to investigations, arrests and rights of detained persons prepared by the Joint General Staff of the Armed Forces on 31 July 1990.

f/ In the period July 1990-June 1991, there were 207 public hearings held, 162 convictions and 263 acquittals.

g/ In January 1992, 125 final sentences had been pronounced in criminal cases, 60 convictions and 65 acquittals. In February 1992, 113 final sentences were pronounced, 63 convictions and 50 acquittals.

h/ The International Covenant on Civil and Political Rights recognizes those rights (art. 9 (3) and 14 (3) (c)). Apart from the provision that "... It shall not be the general rule that persons awaiting trial shall be detained in custody ..." - that only appears in the Covenant - those rights are also established by the American Convention on Human Rights (art. 7 (5) and 8 (1)).

i/ The exceptional nature of pre-trial detention is also established by an important international instrument which was recently adopted by the General Assembly in its resolution 43/173 of 9 December 1988, namely the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, principles 36 (2), 37, 38 and 39.

Notes (continued)

j/ See "Penal systems and human rights in Latin America", Final Document of the research programme conducted by the Inter-American Institute of Human Rights (1982-1986). Coordinator: Professor Eugenio R. Zaffaroni; Publisher: Depalma, Buenos Aires, 1986, p. 149 and ff.

k/ Issued in Decree No. 577 by the Revolutionary Government Junta on 26 January 1981.

l/ See Additional Protocol II to the Geneva Conventions of 12 August 1949, art. 6 (5) (United Nations Treaty Series, vol. 1125, No. 17513).

m/ Guidelines on the Role of Prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, Cuba, from 27 August to 7 September 1990 (A/CONF.144/28).

n/ Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (op. cit.).

o/ United Nations Treaty Series, vol. 75, Nos. 970-973 and ibid., vol. 1125, No. 17513.

Appendix I

Prisoners by penal institution as at 6 March 1992

Penal institution or detention centre	Total by penal institution	Convicted		Total convicted	Awaiting sentence		Total
		M	W		M	W	
GENERAL TOTAL	5 286	522	9	531	4 497	258	4 755
Central Prison	2 084	177	-	177	1 907	-	1 907
Western Reg. Prison a/	611	35	-	35	558	18	576
Eastern Reg. Prison	580	130	-	130	447	3	450
Atiquizaya Prison	96	2	-	2	90	4	94
Prison Hosp. for lung diseases	16	2	-	2	14	-	14
Prison Hosp. at Rosales	10	-	-	-	10	-	10
Prison Hosp. for psychiatric diseases	40	1	-	1	33	6	39
Women's Prison: Ilopango	289	-	9	9	-	280	280
La Union Prison	78	14	-	14	64	-	64
Quezaltepeque Prison	218	36	-	36	179	3	182
Gotera Prison	220	18	-	18	202	-	202
San Miguel Prison	369	41	-	41	320	8	328
Sensuntepeque Prison	193	26	-	26	167	-	167
Sonsonate Prison	327	18	-	18	304	5	309
Usulutan Prison	162	22	-	22	132	8	140
Tonacatepeque Prison	73	-	-	-	70	3	73
Total %	100%	9.88	0.17	10.05	85.07	4.88	89.95

a/ Includes Santa Ana Women's Prison.

Appendix II

Table 1. Complaints received by ONUSAL a/

	January	February	March	Total
Summary executions				
Attributed to members or former members of the armed forces b/	7	4	4	15
Attributed to others	4	7	9	20
Attributed to persons unknown	12	11	16	39
Death threats				
Attributed to members of the armed forces	13	11	6	30
Attributed to others	6	8	16	30
Attributed to persons unknown	5	9	6	20
Enforced or involuntary disappearances				
Attributed to members of the armed forces	3	2	3	8
Attributed to persons unknown	3	-	1	4
Abductions attributed to FMLN	7	4	6	17
Attributed to others	5	4	-	9
Attributed to persons unknown	3	-	1	4
Torture	1	2	-	3
Cruel, inhuman or degrading treatment or punishment	23	20	19	62
Other violations of those rights				
Attributed to members of the armed forces	11	14	18	43
Attributed to others	6	7	11	24
Attributed to persons unknown	26	23	25	74
Violations of due process of law	49	76	66	191
Violations of personal liberty				
Illegal or arbitrary detention	66	43	57	166
Restrictions on freedom of movement	7	1	4	12
Irregular recruitment	100	26	5	131
Violations of freedom of association	6	1	7	14

/...

Table 1 (continued)

	January	February	March	Total
Violations of freedom of expression	-	-	6	6
Humanitarian law				
Humane treatment				
Violations attributed to the armed forces	3	-	-	3
Violations attributed to FMLN	4	3	4	11
Civilian population				
Violations attributed to the armed forces	1	-	-	1
Violations attributed to FMLN	22	12	13	47
Unattributable	3	-	-	3
Inadmissible complaints	97	118	148	363
Total	493	406	451	1 350

Note: The figures for the month of April 1992 will appear in the next report of ONUSAL to the United Nations Secretary-General.

a/ The total or partial figures included refer to complaints received and should not be construed as an affirmation by ONUSAL that the violations actually took place.

b/ "Armed forces" includes the following defence institutions: army, air force and navy, security bodies, civil defence and territorial services.

Table 2. Statistics from the Human Rights Office of the Armed Forces General Staff a/

Violations of human rights by FMLN

Category	January	February	March	Total
Murders of civilians	1	-	1	2
Persons injured or maimed	2	5	-	7
Attacks on the civilian population	3	11	3	17
Abductions of civilians	38	112	6	156
Acts of violence or threats against civilians	3	13	19	35
Forcible recruitment of children under 15	-	-	-	-
Persons killed by mines	1	5	2	8
Persons killed during attacks	-	-	-	-
Persons maimed or injured by mines	2	13	7	22
Rapes	-	-	2	2
Attacks on property	-	5	4	9
Unlawful seizures of land	5	25	12	42
War taxes	-	-	-	-
Total	55	189	56	300

Source: "Statistical information on human rights violations for the months of October, November and December 1991", Human Rights Office of the Armed Forces General Staff.

a/ The governmental Human Rights Commission has not furnished statistics for this period.

Table 3. Statistics from the Legal Protection Office of the Archdiocese of San Salvador a/

Category	January	February	March	Total
Persons arrested	2	1	1	4
Persons arrested and disappeared	-	3	7	10
Persons disappeared	8	2	2	12
Persons arrested and later released	2	-	4	6
Persons abducted by FMLN	-	1	-	1
Prisoners of war held by FMLN	-	-	-	-
Forcible recruitment by FMLN	-	-	-	-
Deaths attributed to death squads	5	6	6	17
Deaths attributed to the armed forces	8	6	1	15
Deaths caused by explosive devices, responsibility unknown	7	6	-	13
Deaths caused by explosive devices, attributed to the armed forces	-	-	-	-
Deaths caused by explosive devices, attributed to FMLN	-	-	-	-
Deaths occurring during cross-fire, responsibility unknown	-	-	-	-
Deaths occurring during cross-fire, attributed to the armed forces	-	-	-	-
Deaths occurring during cross-fire, attributed to FMLN	-	-	-	-
Deaths occurring during army operations (civilians and combatants)	-	-	-	-
Deaths occurring during clashes, ambushes or army patrols (civilians and combatants)	8	-	-	8
Murders attributed to FMLN	1	-	1	2
Army and security force casualties	3	-	-	3
Total	44	25	22	91

Source: Legal Protection Office of the Archdiocese of San Salvador.

a/ The Human Rights Commission of El Salvador (non-governmental) has not furnished statistics for this period.